

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**COMMENTS OF CASE WESTERN RESERVE UNIVERSITY ON
FURTHER NOTICE OF PROPOSED RULEMAKING**
10900 EUCLID AVENUE
CLEVELAND, OH 44106-7020
(216) 368-4286

Case Western Reserve University ("Case") submits these comments in response to the Notice of Proposed Rulemaking dated October 13, 2005 ("Notice"). Case fully supports the comments filed by the Higher Education Coalition and submits this reply to endorse the articulated positions based on its own circumstances.

Briefly, Case agrees that the Federal Communications Commission ("FCC") should clarify that private networks operated by universities are exempt from the Communications Assistance for Law Enforcement Act ("CALEA") and that application of CALEA to Case's broadband network would impose on Case significant additional burdens, and likely costs, that would negatively affect its ability to fulfill its research, teaching and service missions.

It does not appear that CALEA is intended to apply to providers of broadband networks like those provided at Case. Telecommunications carrier, as defined, excludes "persons or entities insofar as they are engaged in providing information services" such as electronic mail providers and Internet service providers. The non-application of CALEA to Case is supported by the statutory language that exempts from coverage equipment, facilities or services that support transport or switching of communications for private networks. *See* 47 U.S.C. §1002(b)(2)(B). As a private, not-for-profit educational institution, Case does not make its network facilities available to the public and is not a common carrier for hire. Therefore, to interpret CALEA to suggest that it applies to a private network that is connected to a public network through the PSTN or the Internet is inconsistent with Congress' intent in enacting the legislation.

Since private network operators are exempt, Case encourages the FCC to clarify that only commercial entities are intended to be covered under footnote 100 in paragraph 36 of the Order. Alternatively, the FCC should utilize its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education from having to comply with the forthcoming assistance-capability requirements. This exemption would be consistent with congressional intent and would avoid imposing unnecessary and unintended costs and burdens on colleges and universities.

Case Western Reserve University, to the extent permitted by applicable law, historically has cooperated and worked effectively with law enforcement to locate and identify individuals who appear to have used the Case network domain, without authorization, for illegal, or potentially illegal, purposes. Although the majority of this content is e-mail based, Case also has cooperated fully with authorities on investigations related to other content, when necessary. These types of information requests, which have emanated both from external law enforcement and from within the University, are infrequent and limited in scope. In fact, Case has not received any request for a wiretap in the last five years.

Case's experience in cooperating with law enforcement during investigations, and the limited number and scope of those investigations, demonstrates that current institutionalized procedures more than adequately ensure compliance with lawful surveillance requests. Based on the infrequency of these types of requests and Case's record of cooperation in responding to such requests, imposing costly and burdensome new technology-assisted capability requirements under a statutory mandate is unnecessary to serve law enforcement's interests.

As stated previously, Case Western Reserve believes that CALEA does not apply to the institution under the plain terms of the statute and the most reasonable interpretation of the "Order." Assuming that the "Order" was interpreted by the Department of Justice or the FCC to require interception of communications by particular users at points *within* Case's network, Case also would have serious reservations about the undue financial burden that compliance would place on private networks on a "just in case" basis. We believe that the burden on Case and other colleges and universities should be commensurate with and measured against the level of documented and anticipated risk. Since Case's experience with these type of requests is unusual, we would assert that the risk is low and that the burden and cost of compliance with CALEA is not commensurate with the risk.

In conclusion, should the FCC apply CALEA broadly to higher education networks, such a decision would inflict significant burdens and costs that overshadow its presumed benefits, particularly in light of the demonstrated history of cooperation by education in the limited number of investigations that have taken place. We believe that the FCC should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements. And, if the Commission does apply

CALEA to private educational networks, we submit that the "Order" should be applied at most to Internet connection facilities at the edge of the network, and that such requirements be phased in over a five-year time period to correspond with a usual cycle of replacement of existing equipment.

Sincerely,

Jeanine Arden Ornt
Vice President and General Counsel
Case Western Reserve University
10900 Euclid Avenue
Cleveland, OH 44106-7020
(216) 368-4286
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